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Attorneys for Defendant RASH CURTIS & ASSOCIATES

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SANDRA McMILLION, JESSICA ADEKOYA,  
AND IGNACIO PEREZ, on Behalf of  
Themselves and all Others Similarly Situated,

Plaintiffs,

v.

RASH CURTIS & ASSOCIATES,

Defendant.

Case No.: 4:16-cv-03396-YGR JSC

**DECLARATION OF MARK E. ELLIS IN  
SUPPORT OF DEFENDANT RASH CURTIS  
& ASSOCIATES' MOTION FOR  
RECONSIDERATION OF MOTION FOR  
SUMMARY JUDGMENT**

Date: January 30, 2018

Time: 2:00 p.m.

Ctrm: 1

Judge: Hon. Yvonne Gonzalez Rogers

I, Mark E. Ellis, declare:

1. I am an attorney at law duly licensed to practice before this Court, and I am the managing partner in the law firm of Ellis Law Group LLP, attorneys of records for Defendant RASH CURTIS & ASSOCIATES in the above matter. This declaration is based upon my own personal knowledge except as to those matters stated upon information and belief, and as to those things I believe them to be true. If called as a witness to testify to the matters asserted herein I would do so competently.

2. I offer this sworn declaration in support of Rash Curtis' Motion for Reconsideration of its Motion for Summary Judgment in light of *ACA International v. Federal Communications Commission*.

4. On July 6, 2017, I took the second part of Mr. Kizer's deposition in the *Rash Curtis & Associates v. Kizer* matter. Attached hereto as **Exhibit B** is a true and correct copy of excerpts from the court reporter's deposition transcript.

/s/ Mark E. Ellis  
Mark E. Ellis

# **EXHIBIT A**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SOLANO

--oOo--

RASH CURTIS & ASSOCIATES, INC., )

Plaintiff, )

vs. ) NO.FCS048565

STEVE KIZER, and DOES 1-10M )

Defendants. )

COPY

TUESDAY, JUNE 20, 2017

--oOo--

Deposition of

STEVE KIZER

Reported By: SUZY S. BAKER, CSR No. 9361

**BAKER**

DEPOSITION REPORTING

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1 A Yes.

2 Q And with Global Connect do you know  
3 whether or not either the hardware or the  
4 software had an automated dialing system that  
5 either generated sequentially or randomly a  
6 number? Do you know one way or the other?

12:07:29 PM 7 A I am going to tell you that my  
8 understanding of that system, it did not  
9 generate a number. Numbers had to be fed to  
10 it.

11 Q Right. So your understanding --

12 A Uh-huh.

13 Q -- because I have read your deposition,  
14 and this is exactly what you testified, is that  
15 someone in management had to load a series of  
16 numbers from various accounts into the system  
17 and then it would dial. The system itself would  
18 not generate the number, would it?

12:07:59 PM 19 A No. That is correct. Management had to  
20 load the numbers in.

21 Q And, and, in fact, management would come  
22 up with how it was going to fit a particular  
23 campaign on a particular day and that was all  
24 done by a manager, it was not done by the  
25 computer system using an algorithm, was it?

1 A Correct.

12:08:26 PM 2 Q And in terms of prior expressed consent,  
3 have you ever heard of that term?

4 A Uh-huh.

5 Q Yes?

6 A Yes.

7 Q What is that?

8 A That means we already have on file in  
9 writing or verbally consent from somebody.

10 Q That's not it at all, is it, really? In  
11 fact --

12 MR. FULTON: Well are you done with your  
13 answer?

14 MR. ELLIS: Okay.

15 MR. FULTON: Please let him finish his  
16 answer.

17 MR. ELLIS: I sure will. I'm sorry. I  
18 apologize.

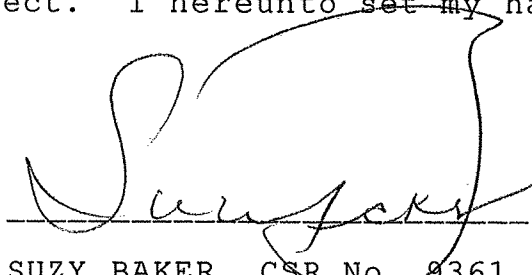
19 So you say -- what you understood prior  
20 expressed consent to be is, repeat, repeat your  
21 answer.

22 A That already on file with ourselves we  
12:08:58 PM 23 would have consent in writing or verbally from  
24 an individual for a said action, whatever that  
25 might be.

**REPORTER'S CERTIFICATION OF CERTIFIED COPY**

I, SUZY BAKER, CSR No. 9361, a Certified Shorthand Reporter in the State of California, certify that the foregoing pages 1 through 107 constitute a true and correct copy of the original deposition of STEVE KIZER, taken on Tuesday, June 20, 2017.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. I hereunto set my hand on June 25, 2017.



SUZY BAKER, CSR No. 9361

**EXHIBIT B**



SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SOLANO

--oOo--

RASH CURTIS & ASSOCIATES, INC., )  
Plaintiff, )  
vs. ) NO.FCS048565  
STEVE KIZER, and DOES 1-10M )  
Defendants. )  
\_\_\_\_\_ )

**THURSDAY, JULY 6, 2017**

--oOo--

**Continued Deposition of  
STEVEN KIZER  
(Volume 2)  
(Pages 108-289)**

Reported By: SUZY S. BAKER, CSR No. 9361

1 A I honestly never recall seeing that  
2 document in any way, shape, or form.

3 Q Do you believe that I am not telling you  
4 the truth?

5 A I didn't say that.

6 Q No, I am just kidding.

7 A Oh, I'm sorry. You know, it is what it  
8 is. I don't, I don't recall ever seeing that  
9 document.

10 Q Okay. Let's go to the next page which is  
03:53:30 PM11 RCA-00021 and the subject is F1 vic dialer.

12 What is the F1 vic dialer?

13 A When a collector logs on to the dialer  
14 there is campaigns that compopulate (verbatim)  
15 in front of them and they would log in choosing  
16 F1 as an actual campaign; it would be loaded  
03:54:00 PM17 with phone numbers. They would log in and wait  
18 until the account popped on their screen with  
19 somebody on the other end.

20 Q Now the vic dialer was different than the  
21 Global Connect?

22 A Yes.

23 Q All right. And, and the vic dialer, was  
24 it somehow connected with the DAKCS system or  
25 was it --

CERTIFICATE OF REPORTER

I, SUZY BAKER, CSR No. 9361 a Certified  
Shorthand Reporter in and for the State of  
California, hereby certify that the witness in the  
foregoing deposition,

STEVEN KIZER,  
was by me duly sworn to testify the truth, the  
whole truth, in the within-entitled cause; that  
said continued deposition was taken by me, a duly  
certified shorthand reporter and a disinterested  
person, at the time and place herein stated, and  
was thereafter transcribed into typewriting, by  
computer, under my direction and supervision.

I further certify that I am not of counsel  
or attorney for either or any of the parties to  
said deposition, nor in any way interested in the  
outcome of the cause, and that I am not related to  
any of the parties thereto.

IN WITNESS WHEREOF, I have hereunto set my  
hand of July 18, 2017.

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SUZY BAKER, CSR No. 9361